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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 E3 LAND, LLC,

Plaintiff,

NO: 2:17-CV-132-RMP

8  
9 v.

10 PETER ERIKSEN, a single man; and  
11 MARY E. ERIKSEN, a single  
12 woman,

Defendants.

ORDER DENYING DEFENDANTS'  
MOTION FOR ADDITIONAL TIME  
TO RESPOND AND GRANTING  
PLAINTIFF'S MOTION TO  
REMAND

13  
14 BEFORE THE COURT is Defendants' Second Motion for Additional Time to  
15 Respond to the Motion to Remand, ECF No. 16, and Plaintiff's Motion to Remand,  
16 ECF No. 9. The Court has reviewed Defendants' motion for additional time, ECF  
17 No. 16; Plaintiff's response, ECF No. 17; Plaintiff's motion to remand, ECF No. 9;  
18 the remaining record; the relevant law; and is fully informed.

19 ***Background***

20 This matter originally was filed in Grant County, Washington, Superior Court  
21 as an action to quiet title to real property that Plaintiff purchased at a public tax sale

ORDER DENYING DEFENDANTS' MOTION FOR ADDITIONAL TIME TO  
RESPOND AND GRANTING PLAINTIFF'S MOTION TO REMAND ~ 1

1 on November 18, 2016. *See* ECF No. 9 at 1-2. Plaintiff E3 Land, LLC purchased  
2 four parcels of real property situated in Grant County for \$2,802,200 and received a  
3 Treasurer's Tax Deed after the sale. ECF No. 9 at 2. Defendants Peter Eriksen and  
4 his mother Mary Eriksen continue to reside on the property at issue and, in  
5 Plaintiff's words, are "refusing to leave." ECF No. 9 at 2. Plaintiff moved for  
6 partial summary judgment, and the Superior Court set a hearing for May 4, 2017.  
7 ECF Nos. 6-1; 9 at 3. On April 7, 2017, Defendants filed a Notice of Removal to  
8 this Court, stating as a basis for removal to federal court that there was diversity of  
9 citizenship among the parties. ECF Nos. 6 and 2. In lieu of providing a copy of  
10 Plaintiff's complaint from state court, Defendants provided Plaintiff's summary  
11 judgment motion and the attachments supporting the motion. After the matter was  
12 removed to federal court, the state court action was stayed and the hearing on  
13 Plaintiff's summary judgment motion was stricken. ECF No. 9 at 3.

14 At the time that Plaintiff filed its motion to remand this matter to state court,  
15 Plaintiff concurrently filed a motion to expedite hearing of the motion, and the Court  
16 granted a moderately expedited hearing schedule upon a finding that Plaintiff had  
17 presented good cause. ECF No. 11. However, subsequently, the Court granted  
18 Defendants' first motion for additional time to respond, over Plaintiff's opposition to  
19 an extension, and set a deadline of May 26, 2017, for Defendants to file any  
20 response, and a deadline of June 2, 2017, for Plaintiff to file any reply. ECF No. 15.  
21 The Court directed the Clerk's Office to telephone Defendants at the phone number

1 they had provided to inform them of the Court’s ruling and the deadline for their  
2 response, in addition to mailing the order to Defendants. *Id.*

3 In Defendants’ second motion for additional time to respond to the motion to  
4 remand, Mr. Eriksen and Ms. Eriksen assert that they removed the matter to federal  
5 court “because of the national concerns regarding the congressional land  
6 grant/presidential land patent update, and not for some other improper purpose.”  
7 ECF No. 16 at 1. Defendants assert “conflict preemption by national law over state  
8 law.” ECF No. 16 at 2. Plaintiff again opposes Defendants’ request for enlargement  
9 of time to file a response. ECF No. 17.

10 Plaintiff argues that there was not jurisdiction to support removal to federal  
11 court. ECF No. 9 at 5. Plaintiff contends that there is neither diversity of citizenship  
12 between the parties nor any federal question. *Id.*

### 13 ***Request for Additional Time***

14 As a preliminary matter, the Court does not find good cause to extend any  
15 further time to Defendants to respond to Plaintiff’s motion. Defendants waited until  
16 the end of their extended response period to request 21 more days to respond. The  
17 Court agrees with Plaintiff that Defendants may be engaging in a delay tactic. As a  
18 result, Defendants’ period for responding to Plaintiff’s motion expired without any  
19 response filed. Nevertheless, the Court considers the relevant arguments Defendants  
20 made in their other filings as the Court determines Plaintiff’s motion to remand.

### *Legal Standard*

An action filed in state court may be removed to the federal district court embracing the place where the action is pending when the federal court would have original jurisdiction over the action. 28 U.S.C. § 1441(a). A plaintiff may challenge removal by moving for remand. *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009). When remand from federal to state court is sought based on lack of subject matter jurisdiction, the party opposing remand bears the burden of demonstrating that the matter is properly before the federal court. *Sullivan v. First Affiliated Securities, Inc.*, 813 F.2d 1368, 1371 (9th Cir.), *cert. denied*, 484 U.S. 850 (1987). Removal statutes are strictly construed; any doubt as to the propriety of removal should be resolved in favor of remand. *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996).

Defendants generally may remove to federal court “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 163 (1997) (quoting 28 U.S.C. § 1441(a)). Therefore, the issue of whether removal was proper depends upon whether the case originally could have been filed in federal court. *See id.* Removal can be based on diversity jurisdiction or on federal question jurisdiction. *See* 28 U.S.C. § 1441(b). The federal question statute provides that “district courts shall have original jurisdiction of all civil

1 actions *arising under* the . . . laws . . . of the United States.” 28 U.S.C. § 1331  
2 (emphasis added).

3 A district court determining whether a case originally could have been filed  
4 in federal court, thus rendering removal proper, applies the “well-pleaded  
5 complaint rule.” *See Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149  
6 (1908). Under that rule, federal jurisdiction exists only when a federal question is  
7 presented on the face of a plaintiff’s properly pleaded complaint. *Caterpillar, Inc.*  
8 *v. Williams*, 482 U.S. 386, 392-93 (1987); *Calif. ex rel. Lockyer v. Dynegy, Inc.*,  
9 375 F.3d 831, 838 (9th Cir. 2004). The rule rests on the premise that a plaintiff is  
10 the master of his or her case and may choose whether to rely on state or federal  
11 law. *Redwood Theatres, Inc. v. Festival Enterprises, Inc.*, 908 F.2d 477, 479 (9th  
12 Cir. 1990). If a plaintiff “can maintain his claim on both state and federal grounds,  
13 he may ignore the federal question and assert only a state law claim and defeat  
14 removal.” *Sullivan*, 813 F.2d at 1371-72.

15 Moreover, “whether a case is one arising under . . . a law . . . of the United  
16 States, in the sense of the jurisdictional statute, . . . must be determined from what  
17 necessarily appears in the plaintiff’s . . . [complaint], unaided by anything alleged  
18 in anticipation of avoidance of defenses which it is thought the defendant may  
19 interpose.’ . . . For better or worse, . . . a defendant may not remove a case to  
20 federal court unless the *plaintiff’s* complaint establishes that the case ‘arises under’  
21 federal law.” *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S.

1 1, 10 n. 9 (1983) (emphasis in original) (*quoting Taylor v. Anderson*, 234 U.S. 74,  
2 75-76 (1914)). Well-settled law bars the removal of a case based on a federal  
3 defense, including the defense of pre-emption. *Id.* at 14. Nor may a defendant  
4 transform a state action into a federal one by filing a federal counterclaim. *Vaden*  
5 *v. Discover Bank*, 556 U.S. 49, 60 (2009).

### 6 *Analysis*

#### 7 **Subject Matter Jurisdiction**

8 There does not appear to be any basis to find that the Defendants are citizens  
9 of any state other than Washington. Defendants provide addresses for themselves in  
10 Royal City, Washington, and on Lummi Island, Washington. ECF No. 2-1 at 2-3.  
11 Plaintiff is a Washington corporation. Therefore, there is no basis to find that this  
12 matter originally could have been filed in federal court based on diversity of  
13 citizenship between Plaintiff and Defendants.

14 As for whether federal question jurisdiction exists, there is no dispute that this  
15 case is an action to quiet title. As a general rule, quiet title actions belong in state  
16 court because state law creates the cause of action. However, Courts have a long  
17 history of finding that a federal question is presented in quiet title actions under rare  
18 sets of circumstances. *See Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545  
19 U.S. 308 (2005) (finding federal jurisdiction existed in a quiet title action where  
20 there was a question about whether the Internal Revenue Service held a superior  
21 claim to the property under federal tax law); *Hopkins v. Walker*, 244 U.S. 486, 490-

1 91 (1915) (featuring plaintiffs who alleged that federal mining law gave them a  
2 superior claim to property).

3 Defendants did not claim in their removal notice, nor is there any evidence in  
4 the record, that resolution of the state law quiet title claim here turns on any  
5 substantial question of federal law. With respect to the argument that Defendants  
6 raise in their second motion for additional time, the Court cannot decipher a federal  
7 question out of Defendants' assertion that any parcels historically involved in a  
8 Congressional land grant fall within the "national concern." Most determinative,  
9 Plaintiff does not refer to any federal authority in stating its claim to quiet title to the  
10 property. *See* ECF No. 6-1. The Court resolves these pivotal problems regarding  
11 Defendants' removal of this action to federal court in favor of remand. *See Duncan*  
12 *v. Stuetzle*, 76 F.3d at 1485.

### 13 **Request for Attorney's Fees**

14 Plaintiff further requests an award of attorney's fees incurred in opposing  
15 removal. A district court may, in its discretion, order payment of the expenses  
16 incurred as a result of removal when a case is remanded to state court. *See* 28  
17 U.S.C. § 1447(c). The standard for an award of attorney's fees under § 1447(c) is  
18 whether "the removing party lacked an objectively reasonable basis for seeking  
19 removal." *Lussier v. Dollar Tree Stores, Inc.*, 518 F.3d 1062, 1065 (9th Cir. 2008).  
20 Although Defendants failed to meet their burden of satisfying the strict removal  
21 standard, the Court cannot find that Defendants, appearing pro se, acted in bad

1 faith or were aware that there was no objectively reasonable basis for the removal  
2 when they did not have the benefit of legal counsel. Defendants also were granted  
3 permission to proceed in this matter *in forma pauperis*. ECF No. 5. Therefore, the  
4 Court declines to enter an award of attorney's fees and costs at this time.

5 Accordingly, **IT IS HEREBY ORDERED** that:

- 6 1. Defendants' Motion for Extension of Time to File a Response, **ECF**  
7 **No. 16**, is **DENIED**;
- 8 2. Plaintiff's Motion to Remand, **ECF No. 9**, is **GRANTED**.
- 9 3. This matter is remanded to Grant County Superior Court.
- 10 4. The Court denies Plaintiff's request for attorney's fees and costs.

11 The District Court Clerk is directed to enter this Order and provide copies to  
12 counsel and to pro se Defendants, and **close this case**.

13 **DATED** June 7, 2017.

14  
15 s/ Rosanna Malouf Peterson  
ROSANNA MALOUF PETERSON  
16 United States District Judge  
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